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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,334	02/28/2002	Mark Lieberman	ACX-100-B	8083

7590 08/27/2003

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EXAMINER

WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/085,334	LIEBERMAN, MARK	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ana L. Woodward	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002 and 31 October 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-9, 13, 18-22, 25, 27, 31-36 and 38-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12, 14-17, 23, 24, 26, 28-30 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-52 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, 13, 18-22, 31-36 and 38-52, drawn to a two-component blend, classified in class 525, subclass various.
  - II. Claims 10-12, 14-17, 23-30 and 37, drawn to a three-component blend, classified in classes 524 and 525, subclass various.

2. The inventions are distinct, each from the other because:

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a molding composition in and of itself without the presence of an additional material, which would react in-situ to produce a mutually exclusive final product, and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Claims 1-52 are generic to a plurality of disclosed patentably distinct species comprising the various materials defining the non-olefinic polymer. The election of an ultimate species of non-olefinic polymer is requested. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. During a telephone conversation with Mr. William M. Hanlon, Jr. on August 23, 2003 a provisional election was made with traverse to prosecute the invention of group II comprising a polyester as the ultimate species of non-olefinic polymer, claims 10-12, 14-17, 23, 24, 26, 28-30 and 37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-9, 13, 18-22, 25, 27, 31-36 and 38-52 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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***Claim Rejections - 35 USC § 112***

6. Claims 10-12, 14-17, 23, 24, 26, 28-30 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims <sup>10,</sup> 13 and 23, the format of the markush groups defining the major and minor components is queried.

In claims <sup>10,</sup> 13 and 23, by “copolymers of polyalkylenes” do applicants mean copolymers of alkylenes?

In claims 10, 13 and 23, is the “wherein at least one...” proviso defining the antecedently recited “polyalkylenes” or “copolymers of polyalkylenes”? Furthermore, does “between 2 and 6 carbon atoms” exclude 2 and 6?

In claims 10, 13 and 23, it is unclear how the “amorphous thermoplastic rubbers” species can be definitive of a “non-olefinic” polymer genus since the former includes rubbers derived from olefinically unsaturated monomers.

In claim 10, “orientable alloyed relationship” is indefinite as to scope and meaning.

In claims 24 and 29, by “copolymers of polypropylene” do applicants mean copolymers of propylene?

In claim 26, it is unclear if or how the “polybutylene” and “polytetramethylene” terephthalates can be derived from ethylene glycol.

In claims 10, 14-17, 23, 37 the “migratory compatibilizer” is indefinite as to scope and meaning.

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In claims 10, 14 and 16, "orientational positioning" is indefinite as to scope and meaning.

In claims 10, 14, 16, it is unclear if or how the narrower limitation, "such as heat" limits the antecedently recited broader recitation.

In claim 15, there is no express antecedent basis for "the at least one first primary migratory compatibilizer".

In claim 17, "full functional compatibilization" is indefinite as to scope and meaning.

In claim 17, "maleic" has been misspelled.

In claim 17, the markush group defining the compatibilizer is queried as to format.

In claim 23, "outwardly oriented" is indefinite as to scope and meaning.

In claim 30, it is unclear if or how the interfacial regions having polyamide polymer limits the embodiments of claim 24 wherein the non-olefinic polymer is other than a polyamide.

In claim 37, "the organic binder agent" lacks express antecedent basis.

***Claim Rejections - 35 USC § 102/103***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



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8. Claims 10, 11 and 14-16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. 4,410,482 (Subramanian).

Subramanian discloses a melt processable polymeric material comprising a major <sup>amount</sup> of a polyolefin and a minor amount of a polyester wherein said polyolefin is in the form of a continuous matrix phase and the polyester is in the form of a discontinuous phase. The polymeric material also comprises a compatibilizing polymer, which adheres together the major and minor components. See examples 11-14, column 2, lines 36-39, 59-64, column 4, lines 1-8, column 5, lines 8-22, etc.

The claimed terminology "orientable alloyed relationship" and "orientational positioning" are taken to define a randomly oriented dispersion of the minor component in the major component (per specification page 7) and, as such, are deemed met by the reference's similar morphology wherein the minor polyester component is dispersed in the major polyolefin component. As to the requirement that the present compatibilizer promote "bonding at interfacial locations between the non-olefinic and the olefinic polymer", such function is deemed met by the reference's compatibilizer, which adheres the polyolefin and polyester components together.

The disclosure of the reference meets the requirements of the present claims both in terms of the types of materials added and their contents. The onus is shifted to applicants to establish that the products of the present claims are not the same as or obvious from those set forth by the reference.

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***Claim Rejections - 35 USC § 103***

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.s. 4,410,482 (Subramanian) described hereinabove.

In essence, the disclosure of Subramanian differs from the above-rejected claim in not expressly exemplifying the use of a combination of compatibilizers. In this regard, it is maintained that it would have been obvious to one having ordinary skill in the art to have employed a mixture of compatibilizers in the reference with the reasonable expectation of obtaining their additive effect. It is prima facie obvious to combine two materials each of which is taught by the prior art to be useful for the same purpose in order to form a composition which is to be used for the same purpose.

***Double Patenting***

10. Claims 10-12, 14-17, 23, 24, 26, 28-30 and 37 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 09/921,773. Although the conflicting claims are not identical, they are not patentably distinct from each other because they contain overlapping subject matter with respect to the polyamide component.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).



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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

*Allowable Subject Matter*

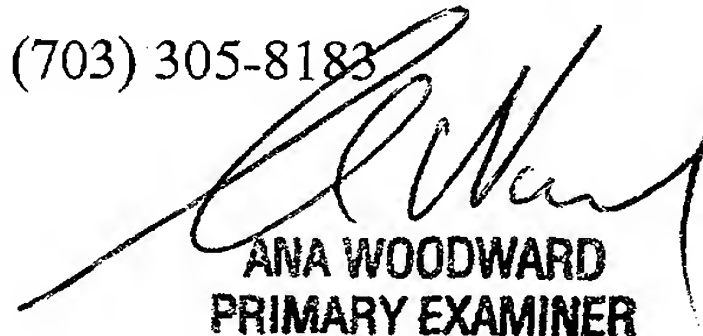
12. The embodiment of claim 12 comprising polyolefin, polyester and siloxane oil as compatibilizer is deemed allowable over the prior art of record. The prior art of record neither anticipates nor renders obvious said particular combination of ingredients.

The embodiment of claim 23 comprising polyolefin and polyester is deemed allowable over the prior art of record. The prior art of record does not anticipate or render obvious a molded workpiece characterized by having elevated concentrations of the minor polyester component at the surface thereof and elevated concentrations of the major polyolefin component in the interior regions of the workpiece.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (703) 308-2401. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (703) 308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-8183.

  
ANA WOODWARD  
PRIMARY EXAMINER